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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/091,333	10/26/1998	ANTHONY CORNELIUS O'SULLIVAN	PI/5-20691A	4833

26748 7590 02/10/2003

SYNGENTA CROP PROTECTION, INC.  
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GREENSBORO, NC 27409

EXAMINER

GERSTL, ROBERT

ART UNIT	PAPER NUMBER
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1626

DATE MAILED: 02/10/2003

35

Please find below and/or attached an Office communication concerning this application or proceeding.

## Office Action Summary

Application No.

09/091,333

Applicant(s)

O'SULLIVAN ET AL.

Examiner

Robert Gerstl

Art Unit

1626

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☐ Responsive to communication(s) filed on 22 October 2002.
- 2a) ☐ This action is **FINAL**.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1-7,9,10,12,13,15,16,18-20,22-24,26,27,29-31,33-35,37,38,40-42,44-46,48-52,54-56,58-64,66,67,69

is/are pending in the application.

4a) Of the above claim(s) See Continuation Sheet is/are withdrawn from consideration.

- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1,69 is/are rejected.
- 7) ☒ Claim(s) 2-7,9,10,12 and 13 is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on \_\_\_\_\_ is: a) ☐ approved b) ☐ disapproved by the Examiner.  
If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

### Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  
a) ☐ All b) ☐ Some \* c) ☐ None of:  
1. ☐ Certified copies of the priority documents have been received.  
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.  
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).  
\* See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).  
a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

**Attachment(s)**

- |  |   |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)                             | 4) <input type="checkbox"/> Interview Summary (PTO-413) Paper No(s). _____  |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)         | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449) Paper No(s) _____ | 6) <input type="checkbox"/> Other: _____                                    |

U.S. Patent and Trademark Office  
PTO-326 (Rev. 04-01)

**Office Action Summary**

Part of Paper No. 35

Continuation of Disposition of Claims: Claims withdrawn from consideration are 15,16,18-20,22-24,26,27,29-31,33-35,37,38,40-42,44-46,48-52,54-56,58-64,66 and 67.

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1. The finality of the last action is withdrawn.
2. Claims 15, 16, 18-20, 22-24, 26, 27, 29-31, 33-35, 37, 38, 40-42, 44-46, 48-52, 54-56, 58-64, 66, 67 are withdrawn from further consideration pursuant to 37 CFR 1.142(b), as being drawn to a nonelected inventions, there being no allowable generic or linking claim. Applicant timely traversed the restriction (election) requirement in Paper No. 11.
3. Claim 69 is rejected under 35 U.S.C. 102(g) based upon claim1 of Patent No. 5679796.

Failure to present claims and/or take necessary steps for interference purposes after notification that interfering subject matter is claimed constitutes a disclaimer of the subject matter. This amounts to a concession that, as a matter of law, the patentee is the first inventor in this country. See *In re Oguie*, 517 F.2d 1382, 186 USPQ 227 (CCPA 1975).

4. Claim 1 is rejected under 35 U.S.C. 112, second paragraph, as being directed to a misjoinder of inventions for the reasons of record.
5. Claims 2-7, 9, 10, 12, 13 are objected to because of the following informalities:  
The claims are dependent on a rejected claim. Appropriate correction is required.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Robert Gerstl whose telephone number is 703 308-4531. The examiner can normally be reached on Mon.-Fri. (7-3:30).

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Joe McKane can be reached on 703 308-4537. The fax phone numbers for

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- the organization where this application or proceeding is assigned are 703 308-4426 for regular communications and 703 308-4426 for After Final communications.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 703 308-1235.



Robert Gerstl  
Primary Examiner  
Art Unit 1626

RG  
February 6, 2003